

## **LEGISLATIVE COUNCIL BRIEF**

### **WEST KOWLOON CULTURAL DISTRICT: THE WAY FORWARD AND WEST KOWLOON CULTURAL DISTRICT AUTHORITY BILL**

#### **INTRODUCTION**

At the meeting of the Executive Council on 29 January 2008, the Council ADVISED and the Acting Chief Executive ORDERED that -

A (a) the recommendations of the Consultative Committee on the Core Arts and Cultural Facilities of the West Kowloon Cultural District (CC) should be adopted as the way forward (an excerpt from the Executive Summary of the Recommendation Report of the CC is at Annex A); and

B (b) the West Kowloon Cultural District Authority Bill (the Bill) at Annex B should be introduced into the Legislative Council (LegCo).

#### **JUSTIFICATIONS**

2. The primary objective of the Government's existing policy on arts and culture is to create an environment that is conducive to the freedom of artistic expression and creation, and the wider public participation in cultural activities. The West Kowloon Cultural District (WKCD) project is a major initiative to implement our policy on arts and culture by meeting the long-term infrastructural and development needs of Hong Kong's arts and culture.

3. Following the discontinuation of the Invitation for Proposals (IFP) process in February 2006, the Chief Executive (CE) appointed the CC and its three Advisory Groups, namely the Performing Arts and Tourism Advisory Group (PATAG), the Museums Advisory Group (MAG) and the

Financial Matters Advisory Group (FMAG), in April 2006 to re-examine and re-confirm, if appropriate, the need for the core arts and cultural facilities in the WKCD as well as the financial implications of developing and operating these facilities. The CC deliberated on the issues through a series of protracted consultations and discussions for 15 months. It submitted a recommendation report to the Chief Executive on 30 June 2007<sup>1</sup>. The Government subsequently launched a three-month Public Engagement (PE) exercise on 12 September 2007 to solicit public views on the recommendations. The results of the PE exercise, as well as the Government's existing work and proposals on software development have been set out in a paper entitled "Major Findings of the Public Engagement Exercise and Follow-up Work for the WKCD Project" which has been issued concurrently to LegCo Subcommittee on WKCD Development (LegCo Subcommittee).

4. Taken into account the CC's recommendations, we take the view that the WKCD is an important strategic investment in arts and culture for the future of Hong Kong, which is as important as investment in education and any other major forms of public investment. This kind of investment should be forward-looking and vision-driven, rather than just for the purpose of meeting an established market demand, notwithstanding the fact that there is an acute shortage of performing arts and exhibition venues. The vision and objectives of the WKCD project are to develop an integrated arts and cultural district with world-class arts and cultural facilities, distinguished talents, iconic architectures, and quality programmes with a must-visit appeal to local and overseas visitors, capable of making Hong Kong an international cultural metropolis. It should also be a driving force to foster the growth and development of cultural and creative industries in Hong Kong, as well as a cultural gateway to the Pearl River Delta. Our economic impact assessment reveals that the development of the WKCD would bring about a host of tangible and intangible economic benefits for Hong Kong in the longer term. At the same time, the WKCD project should seek to enrich the cultural life of the local community through its connectivity with the neighbourhood areas, and provide a spacious, vibrant and accessible harbourfront for public enjoyment.

<sup>1</sup> The recommendation report can be accessed at <http://www.hab.gov.hk/wkcd/pe/eng/report4.htm>.

5. We propose to adopt the CC's recommendations (summary at Annex A) to provide, in two phases, a total of 15 performing arts facilities, at least 30,000m<sup>2</sup> of piazza areas, one museum-type cultural facility and an exhibition centre as the core arts and cultural facilities in the WKCD. We also propose to adopt a prudent and transparent financing approach to develop the WKCD such that it could operate in a financially sustainable manner within the area of land earmarked for the project.

6. To take forward the WKCD project, we propose to adopt the CC's recommendation that the Government should proceed to draw up the requisite legislative proposals for establishing the West Kowloon Cultural District Authority (WKCDA) for the purpose. Analysis of international experience has shown that the potential for increasing private sector involvement and for managing and financing a major public development on a large scale would be enhanced by the establishment of a dedicated, area-based development and/or operating authority. Setting up the WKCDA with wide representation from different sectors to take forward the WKCD project would also be in line with the principles of "Partnership", "Community-driven" and "People-oriented" underlying the Government's existing cultural policy. Accordingly, the WKCDA should be tasked with the responsibility of planning, developing, operating and maintaining the arts and cultural facilities, as well as other related facilities in the WKCD in a financially sustainable manner. The WKCDA should also be encouraged to involve the private sector in the design, construction, operation, management and maintenance of the arts and cultural facilities, related facilities and ancillary facilities in order to bring innovation, creativity and efficiency into the development and operation of the facilities.

7. In preparing the Bill, we have taken into account the recommendations of the CC, the views of LegCo Members, deputations to the LegCo Subcommittee as well as public views collected from the PE exercise conducted from mid-September to mid-December 2007.

### **Functions of the WKCDA**

8. As the dedicated statutory body to take forward the WKCD project, we propose that the WKCDA should be tasked with the responsibility of implementing the WKCD project from its planning to the

operation stages and ensuring the financial sustainability of the project. The proposed major functions of the WKCDA include the following-

- (a) to prepare a development plan for the whole WKCD site (about 40 hectares) taking into account the development parameters (such as overall plot ratio, cap on residential development, building heights, public open space area, etc.) that will be set out in the relevant Outline Zoning Plan. In doing so, the WKCDA shall consult the Secretary for Home Affairs (SHA) and the public, and ensure that any conditions or requirements imposed by SHA are satisfied;
- (b) to submit the development plan to the Town Planning Board (TPB) for consideration on the suitability for publication; subsequent amendments to the plan (before approval by the Chief Executive in Council (CE in C)) will also be subject to the TPB's consideration;
- (c) to develop the land granted to the WKCDA in accordance with the land use and conditions specified in the development plan as may be approved by the CE in C; including the arts and cultural facilities and related facilities prescribed therein, but excluding residential, hotel and office developments;
- (d) to operate, manage and maintain the arts and cultural facilities, related facilities that include retail/dining/entertainment (RDE) facilities, and ancillary facilities; and
- (e) to promote, organize and sponsor the appreciation of and participation in arts and culture.

9. The arts and cultural facilities, related facilities and ancillary facilities mentioned in the above statutory functions of the WKCDA would cover the arts and cultural facilities recommended by the CC. We propose not to specifically set out each of all these arts and cultural facilities, related facilities and ancillary facilities in the Bill in order to provide flexibility for the WKCDA to make adjustments in response to market demand and the evolution of the arts and cultural scene in future. However, to provide a certain degree of certainty that the recommended facilities will be provided by the WKCDA, we propose to require, by way of imposing suitable

conditions or requirements, the WKCDA to include the recommended arts and cultural facilities in the development plan together with the relevant parameters such as the seating capacity of each venue. Similar requirements will also be set out in the land grant(s) for the sites to be granted to the WKCDA.

### **Purposes of the WKCDA**

10. We propose that the purposes of the WKCDA should reflect the vision and objectives of the WKCD project, so as to distinguish its role from that of any large-scale property or facilities management agency. The WKCD is an important strategic investment in arts and culture for the future of Hong Kong. It is a major initiative to meet the long-term infrastructure needs of Hong Kong's arts and cultural development. It should be a cultural hub for attracting and nurturing talents, as well as a driving force to foster the growth and development of cultural and creative industries. The WKCDA should therefore be performing its functions having regard to one or more of the following purposes-

- (a) to contribute to the long-term development of Hong Kong into an international arts and cultural centre;
- (b) to contribute to the enhancement of appreciation of a diverse and pluralistic range of the arts;
- (c) to contribute to the development of new and experimental works in arts and culture;
- (d) to contribute to the development of cultural and creative industries;
- (e) to contribute to the nurturing of local artists and arts groups;
- (f) to contribute to encouraging wider participation of the local community in arts and culture;
- (g) to contribute to the provision of arts education to the local community;

- (h) to contribute to cultural exchange and co-operation between the Mainland, Hong Kong and other places;
- (i) to contribute to the cooperation between any non-government body or organization and providers of the arts, within and outside Hong Kong;
- (j) to contribute to encouraging commercial and corporate support and sponsorship in arts and culture;
- (k) to provide or facilitate the provision of free and accessible open space in the WKCD to the general public; and
- (l) to strengthen the position of Hong Kong as a tourist destination.

These would also serve as yardsticks for evaluating the performance of the WKCDA in future.

### **Powers of the WKCDA**

11. We propose to provide the WKCDA with the necessary powers to execute its functions and implement the WKCD project. Its major powers include the following-

- (a) in relation to the development and operation of the WKCD,
  - (i) hold, lease, hire or acquire any kind of movable or immovable property;
  - (ii) sell, surrender or dispose of any kind of movable property, or, subject to the conditions of the land grant(s), immovable property ;
  - (iii) enter into any contract for the purpose of providing, operating, managing or maintaining arts and cultural facilities, related facilities or ancillary facilities;
- (b) in relation to the management of resources and finances,

- (i) invest its funds in a financially prudent manner and in such classes or descriptions of investment specified by the Financial Secretary;
  - (ii) borrow moneys or otherwise raise funds for the performance of its functions (but borrowing above a specified amount would not be allowed without the Financial Secretary's approval);
  - (iii) with the prior approval of the Financial Secretary, establish and maintain reserve funds;
  - (iv) apply for and receive grants for the performance of its functions;
  - (v) receive and solicit gifts, donations, sponsorship, etc. and act as trustee of moneys or other property for purposes consistent with the Bill;
  - (vi) determine and collect fees and charges and specify conditions for the use of the facilities under its purview;
  - (vii) employ staff and set terms of remuneration and conditions (including pensions) of their employment;
- (c) in relation to the development of arts and culture,
- (i) commission, mount or present any work in different forms of arts;
  - (ii) sponsor arts and cultural activities;
  - (iii) liaise and co-operate with other persons, in and outside of Hong Kong, for purposes consistent with the Bill;
- (d) in addition to the above,
- (i) set up committees under the Board, establish and acquire bodies corporate (including subsidiaries), and establish trusts or non-profit-making organizations;

- (ii) engage in activities that the CE in C, after consultation with the WKCDA, permits or assigns to it by order published in the Gazette; and
- (iii) make bylaws (subject to LegCo's approval) for the management of the facilities.

### **Composition of the Board of the WKCDA**

12. The Board of the WKCDA is the governing and executive body of the WKCDA. The Board should comprise members with different professional knowledge, expertise and experience, in particular individuals who are knowledgeable and experienced in arts and culture. The development and operation of the WKCD would require different expertise and knowledge in various fields at different stages of the project. For instance, during the development stage, the Board would require more expert advice and inputs from professional disciplines such as town planning, architecture, engineering, surveying, financial management, etc., as well as expertise in the planning and design of arts and cultural facilities. During the operation stage, the Board would require more advice from experts who are knowledgeable in the management and operation of the arts and cultural facilities as well as the production and presentation of programmes and exhibitions, etc. As such, the composition of the Board may vary from time to time to tie in with the needs of the different stages of the development and operation of the WKCD facilities. We therefore consider it not appropriate to specify the precise composition of Board members in the Bill.

13. We propose that the Board should consist of not more than 20 members, comprising a Chairman, who may or may not be a public officer, a Chief Executive Officer (CEO), 15 non-public officer members and three public officer members. The Chairman and all other members of the Board will be appointed by the CE, except the CEO who will be appointed by the WKCDA with prior approval of the CE and who will be an ex-officio member of the Board. All non-public officer members will be appointed in their personal capacity. Since the WKCD is an arts and cultural project, we propose that at least five non-public officer members should, in the opinion of the CE, have knowledge of, or experience in, or exposure to, arts and cultural activities. To help reflect public views and interests, we also

propose that at least one of the non-public officer members should be appointed from amongst the LegCo Members. In view of the practical difficulty of drawing up a proper and fair election system for the arts and cultural community, we propose not to provide in the Bill any mechanism for any members to be returned through any prescribed election procedures.

### **Land matters**

14. In view of the responsibility of the WKCDA to develop and operate an integrated arts and cultural district, we consider it appropriate to grant the necessary land to the WKCDA through one or more land grants by the Director of Lands, such that it would have a clear title to the land and properties erected on it to carry out its functions. After the development plan prepared by the WKCDA is approved by the CE in C, the Government will be in a position to decide on the land area that will need to be granted to the WKCDA. The land-related matters will largely be dealt with in the land grant(s), rather than in the Bill. We therefore propose that the Bill should only make reference to the land grant(s) in provisions relating to the powers of the WKCDA. The terms and conditions of the land grant(s) would include details of the facilities that the WKCDA has to provide, including the number, types and specifications of the arts and cultural facilities, as well as provisions to restrict the assignment, parting with possession, subletting, mortgaging, charging, and disposal of land by the WKCDA.

15. We intend that the land area should be granted to the WKCDA in accordance with the development plan (if subsequently approved by the CE in C) at nominal premium. The reason is that without the proposed one-off endowment of \$21.6 billion (Net Present Value at 2008) from the Government, the WKCDA would not be able to provide and manage all the facilities in the WKCD on a financially sustainable basis. To charge the WKCDA land premium for the land grant(s) would entail the provision of an equivalent additional sum of money in the Government's capital endowment to the WKCDA. We will seek the Executive Council's formal approval for the nominal premium land grant(s) separately.

## **Financial Matters**

16. The resources of the WKCDA will include, among others, a one-off upfront endowment, investment income, the income received by it in operating, managing or dealing with the arts and cultural facilities, the related facilities, including the RDE facilities, and the ancillary facilities and all other moneys and properties, including loans, sponsorships, donations received by it. Relying on these financial resources, the WKCDA is expected to develop and operate the arts and cultural facilities, related facilities and ancillary facilities in a financially sustainable manner.

17. The WKCDA serves the whole community of Hong Kong in realising the vision and objectives of the WKCD project, primarily for the long-term development of arts and culture in Hong Kong. To facilitate the WKCDA to perform its functions properly by alleviating its tax burden, we propose to provide in the Bill that the WKCDA will be exempted from taxation under the Inland Revenue Ordinance (Cap.112), and from stamp duty under the Stamp Duty Ordinance (Cap. 117) in respect of instruments relating to the conveyance of immovable property and the transfer of stock by way of gift and donation to the WKCDA.

## **Provisions to Safeguard Public Interests**

18. To assure the LegCo and the general public that the WKCDA would dutifully discharge its functions in accordance with its prescribed purposes, and that the large amount of resources vested in the WKCDA would be deployed in a prudent and transparent manner, we propose to include a number of measures in the Bill to safeguard public interests.

19. We propose that the WKCDA may establish committees under it to deal with matters such as planning, finance, operation of arts and cultural facilities, etc. Members of the committees may be drawn from the community to ensure that views of different sectors would be reflected. For greater transparency and accountability, we also propose that the Board should make public all appointments to these committees.

20. To put in place an effective monitoring and control system over the performance of the WKCDA while ensuring its operational autonomy in

pursuit of its objectives in arts and cultural development, we propose to require the WKCD A to submit annually to SHA for record purpose a corporate plan covering its programmes of activities in the coming three years, and a business plan setting out the details of its activities and projects to be conducted for the coming year. In terms of financial monitoring, we propose to require the WKCD A to keep proper accounts and records of its transactions and prepare a statement of accounts within three months after the expiry of a financial year and submit an annual report, a statement of accounts and an auditor's report to the Financial Secretary who will cause them to be tabled in the LegCo. We also propose to require the WKCD A to appoint a qualified auditor to audit the statement of accounts to ensure the integrity of its accounts. An Audit Committee will also be set up under the Bill. In addition, we propose that the Director of Audit may also conduct an examination into the economy, efficiency and effectiveness with which the WKCD A expends its resources in performing its functions.

21. To bring in a reasonable degree of public scrutiny and monitoring over the work of the WKCD A, we propose to require the Chairman and the CEO to attend LegCo meetings and answer questions upon LegCo's request. We also propose to require the WKCD A to consult the public on matters relating to the development and operation of arts and cultural facilities and other related matters.

22. To avoid any potential conflict of interest, we propose to require all members of the Board and committees to disclose to the WKCD A their interest upon their first appointment and on occasions as circumstances require. All interests declared will be recorded in a register available for public inspection. Furthermore, if a member of the Board or committee has an interest in any matter which would be discussed or considered, he has to disclose the nature of his interest and withdraw from the meeting as appropriate.

23. On top of the above measures, we also propose to include the WKCD A, its committees and any body corporate (including a subsidiary) or any trust or non-profit making organization established by the WKCD A in Schedule 1 of the Prevention of Bribery Ordinance (Cap. 201) so that their members will be subject to the relevant provisions of Cap. 201. The

WKCDA will also be included in Schedule 1 to the Ombudsman Ordinance (Cap. 397) so that it will be subject to the monitoring of the Ombudsman.

## **THE BILL**

B 24. The West Kowloon Cultural District Authority Bill (Annex B) contains 6 parts and one schedule. The main object of the Bill is to establish the WKCDA to develop the land that will be granted to the Authority into an integrated arts and cultural district; to provide, operate, manage, maintain or otherwise deal with the arts and cultural facilities and related facilities in the WKCD and the ancillary facilities outside the WKCD; to provide for the powers and functions of the WKCDA; to provide for planning and financial matters related to the WKCDA and other connected matters. The structure of the Bill is as follows -

25. **Part 1** includes the short title of the Bill and enables SHA to appoint the commencement date of the Bill (when enacted). It also defines certain terms used in the Bill.

26. **Part 2** contains two divisions. Division 1 provides for matters related to the establishment of the WKCDA and its Board and committees. Division 2 provides that the WKCDA is subject to directions and other requirements, such as the CE in C's directions and the CE's requirement for information related to the affairs and activities of the WKCDA.

27. **Part 3** provides for the planning matters related to the WKCDA. It provides that the WKCDA shall prepare a development plan, consult SHA and the public, and submit the plan to the TPB for consideration. The TPB may deem the development plan as a draft plan prepared by the TPB for the purposes of the Town Planning Ordinance (Cap. 131). The provisions of Cap. 131, including the provisions governing the approval and amendment of the plan, will then apply accordingly.

28. **Part 4** contains four divisions. Division 1 sets out the resources of the WKCDA. Division 2 stipulates that the WKCDA may enter into various financial arrangements, including investment of funds and borrowing of

moneys. Division 3 sets out the accounting arrangements for the WKCDA, including auditing of the WKCDA's accounts. Division 4 provides for arrangements related to the submission of corporate plans, business plans and reports by the WKCDA.

29. **Part 5** contains miscellaneous provisions, such as to empower SHA to make regulations, empower the WKCDA to make bylaws and to give immunity to Board members and committee members under specified circumstances.

30. **Part 6** makes consequential amendments to Cap. 201 and Cap. 397.

31. The **Schedule** sets out the term of office of the Chairman and other Board members and the terms and conditions for their appointment. It also sets out provisions relating to the appointment of the CEO, the proceedings of the Board, conflict of interest in Board meetings, Board members' duty (if being a public officer) to state public interest and the execution of documents of the WKCDA.

#### **LEGISLATIVE TIMETABLE**

32. The legislative timetable will be-

Publication in the Gazette	1 February 2008
First Reading and commencement of Second Reading debate	20 February 2008
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **IMPLICATIONS OF THE PROPOSAL**

C 33. The proposal has economic, financial, civil service and sustainability implications as set out at Annex C. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill does not contain any express binding effect provision. It has no productivity and environmental implications.

## **PUBLIC CONSULTATION**

34. We have conducted a PE exercise on the recommendations of the CC from September to December 2007. The public views received were generally supportive of the recommendations, including the proposal to set up a statutory body to take forward the WKCD project.

35. We have also consulted the LegCo Subcommittee on the major provisions in the Bill through a series of meetings since late November 2007 and listened to views of deputations.

36. We have incorporated the public views and the LegCo Subcommittee's views into the Bill as far as appropriate and practicable.

## **PUBLICITY**

37. A press release will be issued on 31 January 2008 to introduce the provisions of the Bill. A spokesperson will be available to handle media and public enquiries.

## **BACKGROUND**

38. The idea of developing the site of West Kowloon Reclamation into an arts and cultural district was first mooted and discussed in the late 1990s. In September 2002, the Government established the Steering Committee for Development of West Kowloon Cultural District to take forward the project.

39. In 2002-2003, Hong Kong was facing a chronic economic downturn arising from the Asian financial turmoil with a very tight fiscal situation. The Government concluded that the best way to implement the project was to tap private investment and accordingly launched an IFP for developing the WKCD in 2003.

40. Despite previous consultations before launching the IFP, the community started to express diverse views over different aspects of the IFP after the close of the IFP in mid-2004, particularly about the single development approach, the lack of control over plot ratio, the mandatory provision of a huge canopy and insufficient consultations with the arts and cultural sector. In order to obtain further feedback on the three screened-in proposals, the Government organized a public consultation exercise from December 2004 to June 2005. The results revealed that there was considerable resistance against the single development approach and the high density development put forward by the Proponents, and a general preference for a dedicated non-profit-making statutory body to oversee the project.

41. In response to public views, the Government announced in October 2005 that additional development parameters and conditions would be imposed on the original IFP. However, none of the Proponents gave a clear and positive interest in continuing to pursue the WKCD project under these parameters and conditions. In view of the fact that it would not be realistic to meet public aspirations on the one hand and provide sufficient market appeal on the other, the Government decided to discontinue the IFP process in February 2006.

42. In order to lay a solid foundation for plotting a new and alternative route to develop the WKCD, the CE appointed the CC and its three advisory groups, (namely PATAG, MAG and FMAG) in April 2006 to re-examine and re-confirm, if appropriate, the need for the core arts and cultural facilities in the WKCD and the financial implications of developing and operating these facilities.

## **ENQUIRIES**

43. For any enquiries on the brief, please contact Mr Danny Lau, Principal Assistant Secretary for Home Affairs at telephone number 3102 5060 or Mr Frederick Yu, Assistant Secretary for Home Affairs at telephone number 3102 5089.

**31 January 2008**  
**Home Affairs Bureau**

**The summary of the Recommendations of the  
Consultative Committee on the Core Arts and Cultural Facilities  
of the West Kowloon Cultural District**

**(extracted from the Executive Summary of the  
Recommendation Report of the  
Consultative Committee on the Core Arts and Cultural Facilities  
of the West Kowloon Cultural District)**

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**Recommendations of the Consultative Committee  
(taking into account recommendations of the three AGs)**

The Vision of WKCD

- 4.1 The Consultative Committee considers that in any modern knowledge-based economy, **public expenditure on culture and the arts should be regarded as an investment as important as any other major forms of investment**. It contributes to freedom and diversity of expressions, creativity and innovation, community building and development, as well as social harmony and cohesiveness, which should and could not be evaluated only or mainly in terms of financial returns. In addition, investment in culture and the arts should not just be for the purpose of meeting an established market demand, but should also be forward-looking and vision-driven. WKCD is such an investment in culture and the arts.
- 4.2 WKCD is **more than a physical congregation and clustering of arts and cultural facilities**. WKCD should as its vision strive to be -
- (a) an **integrated arts and cultural district** providing quality culture, entertainment and tourism programmes with a must-visit appeal to both local residents and visitors from the rest of the world;
  - (b) a major initiative to **meet the long-term infrastructure needs of Hong Kong's arts and cultural development**;
  - (c) a driving force to foster **organic growth and development of culture and creative industries**;
  - (d) a **cultural hub for attracting and nurturing talents**, and for international cultural exchange and co-operation;

- (e) an *impetus to improve quality of life* through the provision of an accessible, open, spacious and vibrant harbourfront with diverse arts, cultural and entertainment facilities and activities for public enjoyment; and
- (f) a *cultural gateway to the Pearl River Delta* by virtue of its strategic position in the planned rail network between Hong Kong and the Mainland.

#### Recommendations on CACF

#### **a) An optimal mix of arts and cultural facilities with suitable phasing and land reserved for organic growth**

- 4.3 On performing arts (PA) facilities, the Consultative Committee recommends to provide a total of 15 performing arts venues of various types and sizes targeting different art forms. They comprise 12 venues during Phase 1 (around 5-6 years from project commencement period) and another 3 venues during Phase 2 (dependent on demand after facilities in Phase 1 have come into operation).
- 4.4 Taken together, the PA venues account for an increase of 37% over the total seating capacity of Hong Kong's performing venues. This combination of large and small performing venues could fulfill the purposes of enhancing artistic quality, meeting established demand, filling market gaps, and nurturing young and budding artists. The proposed development mode for each of the venues has been tailored to the long-term development needs of the relevant art forms in the local performing arts sector.
- 4.5 Of the 15 proposed performing arts venues, the Concert Hall and Chamber Music Hall should be co-located in a free standing structure with iconic architecture; the Xiqu Centre should also be built with iconic architecture; Great Theatre and the Mega Performance Venue should also be free standing. The remaining facilities should be suitably clustered to achieve synergy and efficiency gains.
- 4.6 The future management bodies of the PA venues in WKCD should seek to build up the artistic character of each venue, manage the venues in close partnership with the performing arts groups, and present programmes to enhance artistic quality.
- 4.7 To maximize the tourism impact from the PA venues, the PA and other arts-related facilities should be suitably clustered together

with the commercial, catering and retail facilities with a well-thought through master plan so as to create people flow and synergy. Moreover, the retailing mix should reflect the character mix of WKCD as the cultural hub of Hong Kong.

- 4.8 As for museums, the Consultative Committee recommends to establish a new type of cultural institution entitled **M+** (**Museum Plus**) with its mission to focus on 20<sup>th</sup> – 21<sup>st</sup> century “visual culture”-a broadly categorized area with rich development potential.
- 4.9 “Visual culture” is a broad area that embraces many areas of shared interest. It refers to areas of culture that are founded on visual expressions and embrace a broad range of creative activity and experience that cross many media. Visual culture includes, therefore, not only visual art (such as installation, painting, photography and sculpture), but also architecture, design (such as fashion, graphic and product design), moving image (such as film, video and television) and popular culture (such as advertising and comics). The **M+** should seek to present 20<sup>th</sup> – 21<sup>st</sup> century “visual culture” broadly defined, from a Hong Kong perspective, the perspective of now, and with a global vision. Design, moving image, popular culture and visual art (including ink art) have been proposed as the initial broad groupings.
- 4.10 The governance structure of the **M+** should have appropriate safeguards to ensure curatorial independence and management autonomy.
- 4.11 Having regard to the need to ensure that the development and operation of the WKCD would be financially sustainable within the 40-hectare WKCD site, the Consultative Committee recommends to reduce the on-site NOFA of **M+** by 30%, and fine-tune the phasing of the development of the scaled down **M+** in two phases at a 70%/30% ratio, without unduly compromising on its intended objectives. The resultant GFA for **M+** would become 78 750 sq. m., comprising 61 950 sq. m. on-site area and 16 800 sq. m. off-site area. This on-site GFA is split into 43 365 sq. m. for Phase 1 and 18 585 sq. m. for Phase 2 according to the 70%/30% ratio. The resultant size of **M+** would still be comparable to renowned museums overseas such as the Museum of Modern Art in New York and Tate Modern in London. This would amount to a substantial increase by 52% of the total space provision of all the existing public museums in Hong Kong.

- 4.12 The Consultative Committee also recommends to set up an interim **M+** possessing similar functions as the permanent **M+** although in a much smaller scale during the interim period. The interim **M+** would be a platform for training of professional staff, as well as providing arts education to the public. It would also conduct researches and build up the collection with a view to laying a solid foundation for **M+**.
- 4.13 The Consultative Committee also recommends the provision of an Exhibition Centre (“EC”) in WKCD. The EC should give priority to uses relating to arts, culture, creative industries and events/activities related to WKCD. The EC should have a separate identity from the **M+**.

4.14 A summary table setting out the recommended CACF is appended below -

(I) Performance Venues

<b>Category (Phase I)</b>	<b>Seating Capacity</b>	<b>Main Purposes</b>
Mega Performance Venue	15 000 (max)	mega events, large scale entertainment shows, pop concerts
A Great Theatre	2 100 to 2 200 (Total: 2 200) (max)	suitable for long-run overseas productions, as well as Chinese and Western opera, drama, ballet, modern dance, musical, children's performances etc.
Two Medium-sized Theatres	500 to 800 each (Total: 1 600) (max)	drama, musical, dance, suitable for local productions
Four Blackbox Theatres	150 to 250 each (Total: 1 000) (max)	experimental/avant-garde performances, budding artists' production, comedy shows, children shows etc.
A Concert Hall	2 000 (max)	orchestral music
A Chamber Music Hall	800 (max)	chamber music, jazz, piano or violin recital etc.
A Xiqu Centre (戲曲中心) (performance venue) (small theatre)	1 400 (max) 400 (max)	Cantonese opera, other forms of Chinese opera and musical performances
Piazza Areas	at least 30 000 m <sup>2</sup>	mega outdoor events, circus, commercial events, concerts
<b>Total :</b>	<b>24 400 (max) ( Phase I)</b>	
<b>Category (Phase II)</b>	<b>Seating Capacity</b>	
<ul style="list-style-type: none"> <li>• A Great Theatre</li> <li>• Two Medium- sized Theatres</li> </ul>	1 900 (max) 800 each (1 600) (max)	
<b>Total :</b>	<b>27 900 (max) (Phases I &amp; II)</b>	

(II) Museum Facilities

<b>Category</b>	<b>Area</b>	<b>Concept</b>
<ul style="list-style-type: none"> <li>• To have a cultural institution with museum functions (called <b>M+</b>, or <b>Museum Plus</b>) on visual culture of the 20th to 21st century</li>   <li>• The initial broad groupings include               <ul style="list-style-type: none"> <li>- Design</li> <li>- Moving image</li> <li>- Popular culture</li> <li>- Visual art (cover ink art)</li> </ul> </li> </ul>	<p>Gross Floor Area (GFA) – 78 750 m<sup>2</sup> comprising</p> <p>(On site : 61 950 m<sup>2</sup> Off site : 16 800 m<sup>2</sup>)</p> <p>The development of <b>M+</b> would be phased – two-thirds of net gallery area are to be provided in the first phase and the remaining one-third to be provided in subsequent phases.</p>	<p>A forward looking institution, to present visual culture of the 20th and 21st century from a Hong Kong perspective, the perspective of now and with a global vision</p>
<p>An Exhibition Centre</p>	<p>NOFA – 10 000 m<sup>2</sup></p>	<p>A self-financed venue with focus on arts, culture, creative industries and WKCD-related activities</p>

**b) Iconic Institutions and New Modes of Governance**

4.15 The Consultative Committee considers it appropriate to develop three of the CACF as iconic architectures by organizing a competition by invitation—the M+, the Xiqu Centre and the Concert Hall/Chamber Music Hall. They would serve as the symbolic and anchor buildings in the WKCD to enhance its aesthetic appeal to both local residents and visitors from all over the world.

4.16 The Consultative Committee recommends that all of the CACF would be managed and operated with new modes of governance with institutional autonomy outside the Government structure. Different types of CACF will possibly be operated in different approaches. The adoption of new modes of governance would bring the management and governance of CACF in WKCD into line with international practices.

**c) Clustering of Venues and Integration with Commercial Facilities**

4.17 All the CACF should be suitably clustered to achieve synergy and efficiency gains, with the exception of the above three, which should be stand-alone structures due to their functions, iconic design and specific image. The CACF should also be integrated with the retail/dining/entertainment (RDE) facilities in the WKCD wherever appropriate, so as to create synergy and attract people flow both during the day and at night. Space should also be set aside around CACF for facilities to develop and promote creative industries in the WKCD such as publishing, advertising, design, visual arts and cinema studios etc.

4.18 Accessibility from and connectivity to the neighbouring community have to be assured through careful masterplanning, with provision for internal transport links.

**d) Space reserved for arts education, international cultural institutions and cultural exchange and co-operation**

4.19 The Consultative Committee recognizes the importance of arts education, nurturing talents and arts groups, as well as cultural exchange in the WKCD project. In this connection, space should be reserved for the following uses:

- Resident companies
- Meeting rooms and common facilities for artists and arts groups
- Arts education venues

- Arts and cultural information centre, space for international meetings/functions/events etc.
- Space for international arts and cultural organizations.

**e) Connectivity with the neighboring areas**

4.20 Efforts should be made to fully integrate arts and cultural facilities in WKCD as well as its overall planning with the neighbouring areas, so as to cultivate an appropriate cultural ambience in the district and its immediate vicinity.

**f) Ample open space and vibrant harbourfront for public enjoyment**

4.21 In response to the growing trend towards lowering building density, greater public awareness about good harbourfront planning and rising public aspiration for quality of life, the Consultative Committee recommends that the WKCD project should be developed on the basis of the development parameters promulgated by the Government in the “October Package” in October 2005, as well as the more stringent building height restrictions proposed by the Planning Department, as summarized below -

- (a) setting the maximum overall plot ratio for the whole WKCD site at 1.81, giving a total GFA of about 726 000 sq. m.;
- (b) capping the residential development at no more than 20% of the total GFA of the WKCD; and
- (c) building height restrictions ranging from 50 to 100 metres PD (more stringent than those in the IFP which allowed building heights of up to 130 metres PD under the Canopy and further flexibility outside the Canopy).

**g) A prudent and transparent financing approach**

4.22 The Consultative Committee accepts the financial assessment results that none of the CACF would be able to recover the costs of operations and maintenance as well as the capital costs. As a result, there is very limited scope for the private sector to take the lead in the development or operation of the facilities in the form of life-cycle PPP arrangements, if no public subsidies are provided. There would also be a significant funding gap (*excess of estimated total capital costs and operating deficits over estimated land premium of the commercial and residential sites*

*in WKCD*) if we were to take on board all the recommendations on the CACF made by PATAG and MAG, and fully adhere to the initial development mix.

The above findings are in line with relevant international experience, which indicates that arts and cultural facilities are typically loss-making and require significant public subsidies in both capital and operating costs.

4.23 The Consultative Committee subscribes to the following principles in drawing up the financing approach for the WKCD project -

- (a) The financing approach should provide funding stability (free from land price fluctuation) conducive to arts and cultural development;
- (b) The financing approach should preserve maximum flexibility in terms of some “land bank” for Hong Kong to create a cultural hub of international status, which could meet not only existing shortfall in facilities and further supply-induced demand, but also to cater for further demand built up through arts education, audience development, inbound tourism etc.;
- (c) The financing approach should ensure early delivery of the project, as we are paying a significant opportunity cost by leaving the land idle; and
- (d) The financing approach should be affordable to the Government and ensure the CACF are financially sustainable in the sense that the future WKCD Authority should have available to it such sources of revenue as to be able to underpin the operation of the CACF without direct recourse to Government.

4.24 Based on the above principles, the Consultative Committee recommends to adopt the following financing approach for WKCD -

- (a) Finance the capital costs through an upfront endowment appropriated by LegCo roughly equivalent to the estimated land revenue from the residential, hotel and office part of the commercial sites within the WKCD; and
- (b) Vest the RDE part of the commercial sites with the WKCD Authority to provide a steady source of recurrent income

through rental proceeds to meet the operating deficits of the CACF.

**h) A balanced development mix bridging the funding gap and reducing the upfront endowment required**

4.25 To ensure that the development and operation of the WKCD would be financially sustainable within the 40-hectare WKCD site while abiding by the development parameters to ensure low-density development (see para 4.21 above), the Consultative Committee also recommends to adopt a package of measures to bridge the funding gap, which aimed at reducing the capital costs and operating deficits on the one hand, and increasing the revenue generated from land resources on the other. These include -

- (a) reducing the scale of the CACF; releasing GFA for office development;
- (b) reducing GFA for hotel by one-third and RDE facilities by 20%; allocating the released GFA for office development to capitalize on the long-term potential of developing West Kowloon as an office node outside the Central Business District, and to provide an essential base load of weekday consumers for the RDE facilities in WKCD; and
- (c) adjusting the funding responsibility between the WKCD Authority and the Government in the communal and infrastructural facilities---the Government to build and maintain the transport and communal facilities which were designed to support the whole of the WKCD area (including residential, commercial and hotel developments), and the WKCD Authority to be responsible for the Open Space, Automated People Mover and Car Parks which have a direct bearing on the WKCD's operation.

4.26 Taking into account the proposed financing approach and the measures to bridge the funding gap, the capital costs would be reduced to \$19.2 billion (NPV at 2006). With a revised development mix, the land premium is estimated at \$18.9 billion (NPV at 2006). The capital cost funding gap is therefore virtually removed. The revised operating deficits (estimated at \$6.7 billion NPV at 2006) can be totally met by the revised net rental income generated from the RDE facilities (estimated at \$7.5 billion NPV at 2006). In other words, an upfront endowment of about \$19 billion (NPV at 2006) would be required for the WKCD to be developed and operated in a self-sufficient and sustainable manner within the 40-hectare WKCD site.

- 4.27 Having regard to the package of recommended measures to bridge the funding gap, the Consultative Committee recommends a balanced development mix, comprising 36% of GFA for CACF which will be suitably integrated with office (15%), RDE (16%), hotel (8%) and residential (maximum 20%) developments. There would also be 23 hectares of public open space in WKCD, comprising 15 hectares at ground level, 3 hectares of piazza areas and 5 hectares on terraces and roof top gardens.
- 4.28 The Consultative Committee considers the WKCD project a timely and worthwhile strategic investment in Hong Kong's future, having regard to the strong economic recovery and the healthy fiscal situation. This should also be a major step to promote cultural and artistic activities in Hong Kong and a strategy that supports the long-term development of Hong Kong and its status as a world city. This has been confirmed by the positive findings of the Economic Impact Assessment (EIA) on WKCD conducted by the Government Economist. The results indicate that the WKCD project is expected to bring about not only substantial tangible economic impacts in terms of value-added contribution to GDP of the economy, visitor spending and employment opportunities, but also various significant intangible benefits for the development of a creative economy, nurturing local talents, attracting and retaining investors and talents, raising quality of life, reinforcing economic integration with the Pearl River Delta and branding Hong Kong as a world city.

#### Establishment of a WKCD Authority

- 4.29 The Consultative Committee recommends that the Government should proceed to draw up as soon as practicable the requisite legislative proposals for the setting up of the WKCD Authority with wide representation from different sectors to take forward the WKCD project.
- 4.30 WKCD Authority should aim to achieve the following objectives -
- (a) contributing to the long-term development of Hong Kong into an international arts, cultural and entertainment hub;
  - (b) facilitating the provision of quality arts facilities and services;
  - (c) enriching the cultural life and meeting the needs of the local community;

- (d) fostering and promoting partnerships between the business sector and the providers of the arts;
- (e) strengthening Hong Kong's position as the premier tourist destination; and
- (f) ensuring the optimal use of land, financial and other resources in the WKCD for purposes specified in the WKCD Authority Ordinance.

4.31 The WKCD Authority should be set up primarily to implement the CACF in the WKCD development on the basis of the detailed work undertaken by the Consultative Committee and its three AGs. The Authority should therefore work within explicit parameters set based on the recommendations of the Consultative Committee and its three AGs, and the outcome of public consultations and engagement conducted by the Government.

4.32 The WKCD Authority will need to carry out such functions and duties, which include masterplanning the development of the WKCD area, planning and executing the use of land vested with it for specified purposes, developing, operating, maintaining and managing the arts and cultural facilities and transport and relevant communal facilities through various means, such as Design and Build contracts, partnership agreements with private or non-Government sectors, overseeing the finances of WKCD to ensure its financial sustainability over the project period, and conducting public consultations on important matters such as masterplanning.

4.33 The public accountability measures as well as checks and balances normally applicable to public bodies established by statute should also be imposed on the WKCD Authority in order to safeguard public interests.

4.34 Pending the enactment of the enabling legislation, there is a need to consider whether, through administrative means, a provisional body or some form of steering committee should be set up to take forward the early stage of preparatory work at once, such as masterplanning, conducting research and detailed planning studies on individual facilities and recruitment of senior staff for the WKCD Authority.

#### Cultural Software and Complementary Measures

4.35 The Consultative Committee considers that the successful

realization of the vision and objectives of the WKCD does not only depend on the timely development of the cultural hardware as defined by the proposed CACF. It also hinges on the timely implementation of a comprehensive strategy for developing the software and humanware in the arts, culture, entertainment and creative industries.

4.36 Having considered the views of PATAG and MAG on cultural software, the Consultative Committee is of the view that the strategy for developing cultural software should cover a number of different areas, as set out below (see para 8.2.2 to 8.2.21 in the full Report) -

- (a) an appropriate funding and assessment system for major professional performing arts groups;
- (b) enhancing support for nurturing budding and young artists;
- (c) promoting and enhancing the capacity of local arts and cultural community;
- (d) review of operational modes of existing Government-run performing venues and museums to bring them into line with international practices;
- (e) creating and maintaining community-based alternative art space for artists' creations;
- (f) enhancing manpower training in arts and culture;
- (g) augmenting arts education and audience building to foster greater awareness, understanding and appreciation of arts and culture;
- (h) continued support for preservation, promotion and development of Cantonese opera;
- (i) enhancing cultural exchange and co-operation as well as global networking;
- (j) formulation of a structured and cohesive strategy for the development and promotion of cultural and creative industries in Hong Kong; and
- (k) improving the strategy for the development of cultural

tourism in Hong Kong.

- 4.37 While recognizing the need to accord equal (if not higher) priority to the above software development measures alongside hardware development in WKCD, the Consultative Committee holds the view that devising initiatives and measures for the long-term growth and development of culture and the arts fall outside the terms of reference of the Consultative Committee. They should be developed by the Government in consultation with the local arts community and other concerned parties outside the WKCD project.

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**WEST KOWLOON CULTURAL DISTRICT AUTHORITY  
BILL**

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## A BILL

To

Establish the West Kowloon Cultural District Authority to develop the land leased to the Authority into an integrated arts and cultural district and to provide, operate, manage, maintain or otherwise deal with, arts and cultural facilities and related facilities in, and ancillary facilities outside, the district; to provide for the powers and functions of the Authority; to provide for planning and financial matters; and to provide for connected matters.

Enacted by the Legislative Council.

## PART 1

### PRELIMINARY

#### 1. Short title and commencement

(1) This Ordinance may be cited as the West Kowloon Cultural District Authority Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

#### 2. Interpretation

In this Ordinance, unless the context otherwise requires –

“ancillary facilities” (附屬設施) means any facilities provided outside the leased area that are ancillary to the preparation or provision of arts and cultural facilities;

“approved development plan” (核准發展圖則) means an approved development plan referred to in section 18(11);

“arts and cultural facilities” (藝術文化設施) means any arts or cultural facilities provided within the leased area that are comprised in any land set apart for such facilities in the approved development plan;

“Authority” (管理局) means the West Kowloon Cultural District Authority established under section 3(1);

“Board” (董事局) means the Board of the Authority established under section 6(1);

“Board member” (董事) means any member of the Board referred to in section 6(3), including the Chairman and the Chief Executive Officer;

“Chairman” (主席) means the Chairman referred to in section 6(3)(a);

“charge” (押記) includes any form of security, including a mortgage;

“Chief Executive Officer” (行政總裁) means the Chief Executive Officer of the Authority appointed under section 7;

“committee member” (委員) means a member of any committee established under section 8 or 9;

“development plan” (發展圖則) means any development plan prepared under section 18(1);

“financial year” (財政年度), in relation to the Authority, means –

- (a) the period beginning on the date of commencement of this Ordinance and ending on 31 March in the next following year; or
- (b) the period of 12 months ending on 31 March in each subsequent year;

“function” (職能) includes a power and a duty;

“land grant” (批地文件) means any instrument in writing by which the Director of Lands agrees to lease land within the plan area (or interests or other rights in respect of the land) to the Authority, and includes a reference to the legal estate created by virtue of section 14 of the Conveyancing and Property Ordinance (Cap. 219) in the land;

“leased area” (批租地區) means all the area of land within the plan area which is leased to the Authority under any land grant;

“plan area” (規劃區) means the area that is set apart for “Arts, Cultural, Entertainment, Commercial and Other Uses” in the SWK approved plan;

“related facilities” (相關設施) means any facilities other than arts and cultural facilities provided within the leased area that are comprised in any land set apart for such facilities in the approved development plan, including –

- (a) any retail, dining or entertainment facilities;
- (b) a mechanical system (if any) which is constructed or adapted for the carriage of passengers and their personal effects within such area;
- (c) roads, public piers and other transport facilities;
- (d) public car parks;
- (e) public open space; and
- (f) such other facilities as the Authority considers necessary or expedient;

“subsidiary” (附屬公司) means a body corporate that is deemed to be a subsidiary of the Authority by virtue of section 2 of the Companies Ordinance (Cap. 32);

“SWK approved plan” (西南九龍核准圖則) means any approved plan for the lay-out of South West Kowloon that is approved under section 9 of the Town Planning Ordinance (Cap. 131);

“SWK draft plan” (西南九龍草圖) means any draft plan for the lay-out of South West Kowloon that is exhibited under section 5 or 7 of the Town Planning Ordinance (Cap. 131);

“Town Planning Board” (城規會) means the Town Planning Board appointed under section 2 of the Town Planning Ordinance (Cap. 131);

“Vice-Chairman” (副主席) means any Vice-Chairman appointed under section 6(4).

## PART 2

### WEST KOWLOON CULTURAL DISTRICT AUTHORITY

#### **Division 1 – The Authority**

#### **3. Establishment of Authority**

(1) There is established by this section a body corporate with the corporate name of “West Kowloon Cultural District Authority” in English and “西九文化區管理局” in Chinese.

(2) The Authority –

- (a) has perpetual succession in its corporate name;
- (b) shall provide itself with a corporate seal; and
- (c) is capable of suing and being sued in its corporate name.

(3) The Authority is neither a servant nor an agent of the Government and does not enjoy any status, immunity or privilege of the Government.

#### **4. Functions of Authority**

(1) The functions of the Authority are –

- (a) to prepare a development plan and, if necessary, amend any development plan under section 18(10), and submit such plan to the Town Planning Board for its consideration;
- (b) to develop the leased area in accordance with the land use and other requirements or conditions specified in the approved development plan;
- (c) either alone or jointly or by agreement with any other person, to provide (including plan, design and construct), operate, manage, maintain or otherwise deal with arts and cultural facilities, related facilities or ancillary facilities;
- (d) to advocate, promote, organize, sponsor, encourage and provide for the appreciation of and participation in arts and culture;

- (e) to promote, exhibit and display the arts publicly and otherwise;
- (f) to initiate and support the creation, composition, production, learning and practising of the arts; and
- (g) to perform such other functions as are conferred or imposed on the Authority by or under this or any other Ordinance.

(2) The Authority, when performing its functions under subsection (1), is to have regard to one or more of the following purposes –

- (a) to contribute to the long-term development of Hong Kong into an international arts and cultural centre;
- (b) to contribute to the enhancement of appreciation of a diverse and pluralistic range of the arts;
- (c) to contribute to the development of new and experimental works in arts and culture;
- (d) to contribute to the development of cultural and creative industries;
- (e) to contribute to the nurturing of local artists and arts groups;
- (f) to contribute to encouraging wider participation of the local community in arts and culture;
- (g) to contribute to the provision of arts education to the local community;
- (h) to contribute to cultural exchange and cooperation between the Mainland of China, Hong Kong and any other place;
- (i) to contribute to the cooperation between any non-government body or organization and providers of the arts, within and outside Hong Kong;

- (j) to contribute to encouraging commercial and corporate support and sponsorship of arts and culture;
- (k) to provide or facilitate the provision of free and accessible open space within the leased area to the general public; and
- (l) to strengthen the position of Hong Kong as a tourist destination.

## **5. Powers of Authority**

(1) The Authority may do all such things as are necessary for, or incidental or conducive to, the performance of its functions under this Ordinance.

(2) Without limiting the generality of subsection (1), the Authority may –

- (a) acquire, hold, lease or hire any kind of property, whether movable or immovable;
- (b) subject to the terms and conditions contained in the land grant, sell, surrender or otherwise dispose of any kind of immovable property;
- (c) sell, surrender or otherwise dispose of any kind of movable property;
- (d) enter into, assign or accept the assignment of, and vary or rescind, any contract or obligation, whether or not for the purpose of providing, operating, managing, maintaining or otherwise dealing with arts and cultural facilities, related facilities or ancillary facilities;
- (e) apply for and receive any grant for the performance of its functions on such terms and conditions as it considers appropriate;
- (f) receive and solicit gifts, donations or sponsorship, whether on trust or otherwise, and act as trustee of moneys or other

properties vested in it on trust, for any purposes consistent with the purposes under section 4(2);

- (g) sponsor or provide financial support to facilitate the organization of activities relating to arts and culture;
- (h) establish any body corporate (including a subsidiary) or any trust or non-profit making organization, as may be appropriate in the opinion of the Authority, to facilitate the attainment of the purposes under section 4(2);
- (i) acquire or dispose of shares of any body corporate (including a subsidiary);
- (j) liaise and cooperate with any person, whether within or outside Hong Kong, for any purposes consistent with the purposes under section 4(2);
- (k) determine, approve or collect, or vary, waive or refund, fees or charges for the use of arts and cultural facilities, related facilities or ancillary facilities;
- (l) specify terms and conditions for the use of any of the facilities referred to in paragraph (k);
- (m) commission, mount or present any work of visual art, exhibition or theatrical, music, dance or other arts production;
- (n) engage in such activities as the Chief Executive in Council may, after consultation with the Authority, permit or assign to it by order published in the Gazette; and
- (o) either alone or jointly or by agreement with any other person, exercise any of the powers of the Authority.

(3) An order under subsection (2)(n) is subsidiary legislation.

## **6. Establishment of Board**

(1) There is established by this section a Board of the Authority.

(2) The Board is the governing and executive body of the Authority with authority to perform, in the name of the Authority, the functions conferred or imposed on the Authority by or under this Ordinance.

(3) The Board is to consist of –

- (a) the Chairman who may or may not be a public officer;
- (b) the Chief Executive Officer;
- (c) not more than 15 other members who are not public officers, including –
  - (i) at least 5 members who, in the opinion of the Chief Executive, have knowledge of, or experience in, or exposure to, arts and cultural activities; and
  - (ii) at least one member who is a member of the Legislative Council; and
- (d) 3 other members who are public officers.

(4) The Chief Executive may appoint one or more than one Board member (other than the Chairman and the Chief Executive Officer) as Vice-Chairman of the Board as long as the person is a Board member.

(5) All Board members (other than the Chief Executive Officer) are to be appointed by the Chief Executive.

(6) The Chief Executive Officer is to be an ex-officio member of the Board.

(7) An appointment made under this section is to be notified in the Gazette.

(8) The number of Board members who are public officers is not to exceed the number of those who are not public officers.

(9) Where the requirements of subsection (3) or (8) are not complied with as a result of any change in membership of the Board or any change of the status of any Board member, the Chief Executive shall as soon as reasonably

practicable make the necessary appointment to ensure that the requirements are complied with.

(10) Notwithstanding subsections (3), (8) and (9), the Board may perform any of its functions, and its proceedings are valid, despite –

- (a) a vacancy in the membership of the Board;
- (b) a defect in the appointment or qualification of a person purporting to be a Board member; or
- (c) a minor irregularity in the convening of any Board meeting.

(11) A notification under subsection (7) is not subsidiary legislation.

#### **7. Chief Executive Officer**

The Authority may, with the prior approval of the Chief Executive, appoint a person to be the Chief Executive Officer of the Authority who is to be an employee of the Authority.

#### **8. Audit Committee**

(1) There is established by this section a committee to be known as the Audit Committee.

(2) The functions of the Audit Committee are –

- (a) to consider such matters relating to the financial affairs of the Authority and to conduct an audit (whether generally or in respect of particular matters) as the Committee considers necessary or desirable; and
- (b) to consider any other matter, whether financial or otherwise, referred or assigned to it by the Board for consideration.

(3) The Audit Committee is to consist of such number of members, not being less than 3, as the Board may determine.

(4) The Board is to appoint each of the members of the Audit Committee but neither the Chief Executive Officer nor any other employee of the Authority is to be so appointed.

(5) The Board is to appoint a Board member (other than the Chairman) to be the chairman of the Audit Committee.

(6) The Board may –

(a) withdraw any matter referred or assigned under subsection (2)(b); or

(b) revoke any appointment made under subsection (4) or (5).

(7) An appointment made under this section is to be made public in the manner as the Board considers fit.

(8) Meetings of the Audit Committee are to be held as often as may be necessary for the performance of its functions.

(9) The Audit Committee may, subject to the requirements of this Ordinance, regulate its own administration, proceedings and business in such manner as it considers appropriate.

## **9. Establishment of committees**

(1) The Board may, for the purpose of performing any of the functions of the Authority, establish such committee as the Board considers necessary or expedient to deal with any matter (including, in particular, matters relating to planning, finance and operation of arts and cultural facilities).

(2) The Board may refer or assign a matter to any committee established under this section for consideration.

(3) A committee is to consist of such number of committee members as the Board may determine.

(4) Each of the committee members, whether or not the member is a Board member, is to be appointed by the Board.

(5) The Board is to appoint a Board member (other than the Chairman) to be the chairman of a committee.

- (6) The Board may –
- (a) withdraw any matter referred or assigned under subsection (2); or
  - (b) revoke any appointment made under subsection (4) or (5).

(7) An appointment made under this section is to be made public in the manner as the Board considers fit.

(8) A committee established under this section may, subject to the requirements of this Ordinance, regulate its own administration, proceedings and business in such manner as it considers appropriate.

#### **10. Appointment of employees of Authority, etc.**

(1) Subject to section 7, the Authority may appoint any person to be its employee.

(2) The Authority may determine the terms and conditions of the employment of its employees, including the terms and conditions relating to allowances, benefits and remuneration.

(3) The Authority may make arrangements for the provision and maintenance of any schemes for the payment of pensions, gratuities and retirement benefits to the employees or former employees of the Authority or their dependants.

(4) The Authority may engage such consultants or advisors as it may consider necessary or expedient and may determine the terms and conditions of their engagement.

#### **11. Delegation and sub-delegation of Authority's functions**

(1) Subject to subsection (2), the Authority may delegate any of its functions to –

- (a) any Board member;
- (b) any committee established under section 8 or 9;

- (c) any body corporate (including a subsidiary) acquired or established by, or any trust or non-profit making organization, established by, the Authority; or
  - (d) any employee of the Authority.
- (2) No delegation is to be made under subsection (1) in respect of –
  - (a) the power of the Authority to delegate under this section;
  - (b) the power to make bylaws;
  - (c) the power to acquire or establish a body corporate (including a subsidiary), or establish a trust or non-profit making organization;
  - (d) the power to acquire or dispose of shares of a body corporate (including a subsidiary).

(3) Where the Authority delegates any function under this section, it may at the same time authorize the delegate to sub-delegate the function and the authorization may contain restrictions or conditions on the exercise of the power to sub-delegate.

(4) A delegation under this section does not prevent the Authority from concurrently performing the function delegated unless it is otherwise stated in the delegation.

(5) A sub-delegation under this section does not prevent a delegate of the Authority from concurrently performing the function sub-delegated unless it is otherwise stated in the sub-delegation.

(6) Where a person or any committee established under section 8 or 9 purports to act pursuant to a delegation or sub-delegation under this section, he or it is presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation or sub-delegation.

**12. Board matters**

The Schedule has effect with respect to the Board members and the Chief Executive Officer, and the proceedings of and other matters concerning the Board.

**Division 2 – Directions and further requirements applicable to the Authority****13. Chief Executive in Council may give directions**

(1) Subject to subsection (2), the Chief Executive in Council may, if he considers the public interest so requires, give such directions in writing to the Authority as he considers appropriate.

(2) A direction given under subsection (1) may not require the Authority to do, or not to do, anything if the requirement is wholly or partly inconsistent with this Ordinance.

(3) The Authority shall comply with any direction given under subsection (1).

(4) A direction given under subsection (1) is to remain in force for such period as is specified in it or, if no period is specified, until it is withdrawn by the Chief Executive in Council.

(5) If compliance with a direction given under subsection (1) results, or is expected to result, in the Authority's being unable to pay (whether wholly or partly) a debt or to discharge (whether wholly or partly) any of its other legal obligations, then subject to subsection (7), the Government shall, upon an application made by the Authority, pay to it an amount equal to any loss as may be reasonably incurred by the Authority by reason of such compliance.

(6) Any sum which is payable under subsection (5) is to be charged and paid out of the general revenue.

(7) Where an application is made under subsection (5), the Authority shall give to the Financial Secretary such relevant information or other relevant particulars as he may require.

#### **14. Chief Executive may obtain information**

(1) The Chief Executive may require the Authority to furnish to him such information relating to its affairs or activities as may be specified by him.

(2) The Authority shall comply with any requirement made under subsection (1) and afford to the Chief Executive facilities for the verification of information furnished.

#### **15. Financial Secretary may obtain information**

(1) The Financial Secretary may, for the purposes of Part 4, require the Authority to furnish to him such information relating to its financial affairs as may be specified by him.

(2) The Authority shall comply with any requirement made under subsection (1) and afford to the Financial Secretary facilities for the verification of information furnished.

#### **16. Attendance at Legislative Council**

(1) The Legislative Council or any committee of the Legislative Council may request the Chairman and the Chief Executive Officer to attend its meetings.

(2) The Chairman and the Chief Executive Officer shall –

(a) comply with the request; and

(b) answer questions raised by the Members of the Legislative Council at the meetings.

#### **17. Public consultation**

Without prejudice to section 18(3)(a), the Authority shall, in relation to matters concerning the development or operation of arts and cultural facilities, related facilities, ancillary facilities and any other matters as the Authority

considers fit, consult the public at such time and in such manner as it considers appropriate.

## PART 3

### PLANNING MATTERS

#### **18. Preparation of development plans, etc.**

(1) Subject to subsections (3) and (5), the Authority shall, as soon as reasonably practicable after the commencement of this Ordinance, prepare a development plan to –

- (a) lay out the plan area;
- (b) set apart any land within the plan area for one or more than one land use; and
- (c) show or make provision for any area that is comprised in the land set apart under paragraph (b).

(2) Without affecting the generality of subsection (1), a development plan –

- (a) may contain any thing that a draft plan may contain under section 3 or 4 of the Town Planning Ordinance (Cap. 131); and
- (b) may provide for the grant of permission under section 16 of that Ordinance for all purposes or for any purpose.

(3) In preparing a development plan, the Authority shall –

- (a) consult the public at such time and in such manner as it considers appropriate; and
- (b) consult the Secretary for Home Affairs.

(4) When consulted by the Authority, the Secretary for Home Affairs may impose such requirements or conditions as he thinks necessary or expedient for the development of the plan area.

(5) In preparing a development plan, the Authority shall have regard to the views received in the consultation conducted under subsection (3)(a) and ensure that –

- (a) the requirements or conditions imposed by the Secretary for Home Affairs (if any) under subsection (4) are satisfied; and
- (b) the development parameters and other requirements or conditions as may be specified in the SWK approved plan are, in so far as they relate to the plan area, complied with.

(6) The Authority shall submit a development plan to the Town Planning Board for consideration under subsection (7).

(7) Upon the submission to it of a development plan under subsection (6) or (10), the Town Planning Board shall consider the plan and may –

- (a) deem the plan as being suitable for publication;
- (b) deem the plan as being suitable for publication subject to such amendments as the Town Planning Board shall specify; or
- (c) refuse to deem the plan as being suitable for publication.

(8) A development plan which is deemed suitable for publication under subsection (7)(a) or (b) is deemed to be a draft plan prepared by the Town Planning Board for the purposes of the Town Planning Ordinance (Cap. 131) and the provisions of that Ordinance concerning any draft plan are to apply accordingly.

(9) Where under section 5 of the Town Planning Ordinance (Cap. 131) a development plan which is deemed to be a draft plan by virtue of subsection (8) is exhibited, such plan is, from the date that the exhibition of the plan is first notified in the Gazette, to replace any SWK draft plan or any SWK approved plan in so far as such SWK draft plan or SWK approved plan relates to the plan area.

(10) Where the Town Planning Board refuses to deem a development plan submitted under subsection (6) as being suitable for publication, the Authority shall amend the development plan and submit it to the Town Planning Board for consideration under subsection (7).

(11) Where a development plan which is deemed to be a draft plan by virtue of subsection (8) is approved under section 9 of the Town Planning Ordinance (Cap. 131) –

- (a) the development plan becomes an approved development plan when the approval is notified in the Gazette; and
- (b) the approved development plan is to be regarded as an approved plan for the purposes of that Ordinance.

(12) Where under section 9 of the Town Planning Ordinance (Cap. 131), the Chief Executive in Council refuses to approve a development plan which is deemed to be a draft plan by virtue of subsection (8), such refusal is –

- (a) to be notified in the Gazette; and
- (b) to revive any SWK draft plan or any SWK approved plan which, under subsection (9), was replaced by it.

## PART 4

### FINANCIAL MATTERS

#### **Division 1 - Resources**

#### **19. Resources of Authority**

- (1) The resources of the Authority consist of –
- (a) all moneys paid by the Government to the Authority, whether by way of appropriation by the Legislative Council, loan or any other means;
  - (b) all moneys provided by any person other than the Government to the Authority, whether by way of loan or any other means;

- (c) income received by the Authority by operating, managing or otherwise dealing with arts and cultural facilities, related facilities or ancillary facilities; and
  - (d) all other moneys and property, including gifts, sponsorships, donations, interest, profits, dividends and investment income, received by the Authority.
- (2) The Authority shall –
  - (a) manage its finances (including resources) with due care and diligence; and
  - (b) ensure the financial sustainability of the operation and management of arts and cultural facilities, related facilities and ancillary facilities.

## **Division 2 - Financial arrangements**

### **20. Investment**

(1) The Authority shall invest, in a financially prudent manner, the funds available for investment in such classes or descriptions of investment as the Financial Secretary may specify in writing.

(2) For the purposes of subsection (1), the Authority may engage financial consultants or advisors under section 10(4) to manage or otherwise deal with its resources referred to in section 19(1).

### **21. Borrowing powers, etc.**

(1) The Authority may borrow from the Government, or otherwise raise, moneys as may be required for the performance of its functions on such terms and conditions as may be approved by the Financial Secretary.

(2) Subject to subsection (3), the Authority may borrow moneys from any person other than the Government for performing its functions.

(3) The Chief Executive may issue a direction in writing for the purposes of this section to the Authority that it is not to borrow or raise any sum

(or its equivalent in a currency other than Hong Kong dollar) which exceeds an amount specified in the direction without the prior written approval of the Financial Secretary.

(4) The Authority shall comply with a direction issued under subsection (3).

(5) The Authority may, with the prior written approval of the Financial Secretary, charge all or any part of its property as security for the repayment of moneys borrowed or raised.

(6) A charge referred to in subsection (5) in so far as it relates to any property of the Authority is not to be enforced, whether by order of any court or otherwise, except with the prior written approval of the Chief Executive in Council and in accordance with the terms and conditions of such approval.

## **22. Power to enter into other financial transactions**

The Authority may, on such terms and conditions as it considers fit, enter into any agreement or arrangement in connection with its financial affairs, including any agreement or arrangement for reducing, compensating for or hedging against any financial risk.

## **23. Guarantees by Government**

(1) The Legislative Council or its Finance Committee may from time to time by resolution authorize the Financial Secretary to grant on behalf of the Government guarantees in respect of the repayment of loans made to, or the discharge of other indebtedness of, the Authority and the payment of interest, premium or other charge on the loans or indebtedness up to an amount not exceeding in total the amount that is specified in the resolution and subject to any terms and conditions specified in it.

(2) If, pursuant to a guarantee granted under subsection (1), the Government makes a payment to a creditor of the Authority in respect of a debt secured by a charge –

- (a) the sum is to be charged and paid out of the general revenue;
- (b) the sum is repayable to the Government by the Authority, together with interest on such sum at such rate as the Financial Secretary may determine, and the Government shall as from the time of payment have the benefit of all the remedies vested in the creditor by virtue of such charge, and may exercise the rights and powers arising under the charge in its own name and without any assignment by the creditor; and
- (c) any sum received by the Government by way of repayment of a sum so paid out, or for the interest on such sum, is to be paid into the general revenue.

#### **24. Reserve funds**

(1) The Authority may –

- (a) with the prior written approval of the Financial Secretary, establish and maintain general and special reserve funds;
- (b) credit into those funds such sums as it considers fit; and
- (c) make such disbursements from those funds as are consistent with this Ordinance.

(2) For the purposes of subsection (1)(b), the Authority shall, in accordance with the direction given by the Financial Secretary at the time when the approval is given, carry the profits (whether wholly or partly) of the Authority in any financial year to the credit of such general or special reserve funds as may be specified in the direction.

### **Division 3 – Accounting arrangements**

#### **25. Authority to keep proper accounting records and to prepare statement of accounts**

(1) The Authority shall keep proper accounts and records of its transactions.

(2) Subject to subsection (5), the Authority shall ensure that a statement of accounts is prepared within 3 months after the end of each financial year, or such longer period as the Financial Secretary may allow, containing –

- (a) a profit and loss account for that financial year;
- (b) a cash flow statement for that financial year; and
- (c) a balance sheet as on the last day of that financial year.

(3) A statement of accounts referred to in subsection (2) is to give a true and fair view of –

- (a) the state of affairs of the Authority as at the end of the financial year to which the statement relates;
- (b) its profit or loss for that financial year; and
- (c) its cash flow for that financial year.

(4) Where the Authority has any subsidiary at any time in a financial year, the statement of accounts prepared under subsection (2) for that financial year is to include the group accounts relating to the Authority and the subsidiaries, and subsection (3) is to apply accordingly.

(5) The Authority shall ensure that the statement of accounts prepared under subsection (2) comply with –

- (a) the manner in which the statement is to be prepared; and
- (b) any accounting standards,

as may be notified to the Authority in writing by the Financial Secretary.

#### **26. Authority to appoint auditor**

(1) The Authority shall, subject to subsection (2), appoint an auditor to audit the statement of accounts prepared under section 25(2).

- (2) The person appointed under subsection (1) is not to be --
- (a) a Board member;
  - (b) a committee member;
  - (c) an employee of the Authority;
  - (d) a partnership of which any partner is a Board member or a committee member; or
  - (e) a body corporate of which any director is a Board member or a committee member.
- (3) The auditor appointed under subsection (1) shall --
- (a) audit the statement of accounts prepared under section 25(2); and
  - (b) submit a report on it to the Authority.
- (4) For the purposes of subsection (3), the auditor is entitled to --
- (a) have access at all reasonable times to all books of account, vouchers and other financial records that are in the custody or under the control of the Authority; and
  - (b) require such information and explanations relating to those books, vouchers and records as he thinks fit.

(5) In this section, “auditor” (核數師) means a certified public accountant (practising) or a corporate practice as defined in the Professional Accountants Ordinance (Cap. 50).

## **27. Director of Audit’s examination**

(1) The Director of Audit may, in respect of any financial year of the Authority, conduct an examination into the economy, efficiency and effectiveness with which the Authority has expended its resources in performing its functions.

(2) For the purposes of subsection (1), the Director of Audit is entitled to --

- (a) have access at all reasonable times to all books of account, vouchers, other financial records and any other property in the custody or under the control of the Authority as he may reasonably require for the purpose of conducting an examination under that subsection; and
- (b) require any person who holds or is accountable for any such document or property to provide such information and explanations as he thinks fit.

(3) The Director of Audit may report to the President of the Legislative Council the results of an examination conducted by him under this section.

## **28. Supplementary provisions to this Division**

For the purposes of this Division, where the Authority has any subsidiary at any time in a financial year, the Authority shall, as soon as reasonably practicable after the end of that financial year, send to the Financial Secretary –

- (a) a copy of the report on the subsidiary's affairs for that financial year; and
- (b) the audited statement of accounts of the subsidiary for that financial year.

## **Division 4 – Other arrangements**

### **29. Corporate plan**

(1) The Authority shall, before the end of each financial year, send to the Secretary for Home Affairs for record purpose a corporate plan of the Authority for a period of 3 years beginning on the first day of the next financial year covering in relation to that period –

- (a) a programme of activities and projects that the Authority proposes to conduct or implement;

- (b) a financial plan including the projected revenue and expenditure, any proposed investment, any proposed loan and the purpose of taking out the loan, the amount and repayment schedule involved (if any), and the staffing requirement, of the Authority.

(2) The Authority shall send its first corporate plan to the Secretary for Home Affairs as soon as reasonably practicable after the Authority is established.

### **30. Business plan**

(1) The Authority shall, before the end of each financial year, send to the Secretary for Home Affairs for record purpose a business plan of the Authority for the next financial year covering in relation to that year –

- (a) details of the activities and projects that are to be conducted or implemented under the corporate plan;
- (b) resources required to conduct or implement such activities and projects;
- (c) details of the financial plan including –
  - (i) the estimated revenue and expenditure;
  - (ii) any proposed loan (including allowances for interest payments); and
  - (iii) the staffing requirement.

(2) The Authority shall send its first business plan to the Secretary for Home Affairs at the same time when its first corporate plan is sent under section 29(2).

### **31. Reports, etc. to be laid before Legislative Council**

(1) The Authority shall, within 6 months after the end of each financial year, submit to the Financial Secretary –

- (a) a report on the activities of the Authority for that financial year;

- (b) a copy of the statement of accounts prepared under section 25(2); and
  - (c) a copy of the report submitted under section 26(3)(b).
- (2) The Financial Secretary shall cause the documents received under subsection (1) to be laid on the table of the Legislative Council.

## PART 5

### MISCELLANEOUS

#### **32. Secretary for Home Affairs may make regulations**

- (1) The Secretary for Home Affairs may make regulations for the purpose of securing the safe operation, management or maintenance of arts and cultural facilities, related facilities or ancillary facilities.
- (2) Any regulations made under subsection (1) may –
  - (a) be made to apply generally;
  - (b) make different provisions for different circumstances and provide for a particular case or class of case;
  - (c) be made so as to apply in such circumstances as are specified in the regulations.

#### **33. Authority may make bylaws**

- (1) The Authority may make bylaws for one or more of the following purposes –
  - (a) for the regulation, operation or management of arts and cultural facilities, related facilities or ancillary facilities;
  - (b) for the conduct of all persons within any premises, buildings, structures, facilities or land (including public places) which the Authority holds or manages, whether within or outside the leased area.

(2) The following provisions apply in relation to bylaws made under subsection (1) –

- (a) any of the bylaws may provide that a contravention of any specified provision in the bylaws is an offence and may prescribe penalties not exceeding a fine at level 3;
- (b) without prejudice to any Ordinance relating to the prosecution of criminal offences or the powers of the Secretary for Justice in relation to the prosecution of criminal offences, prosecutions under any of the bylaws may be brought in the name of the Authority;
- (c) all bylaws are subject to the approval of the Legislative Council.

#### **34. Disclosure of interest**

(1) A Board member or a committee member shall –

- (a) upon his first appointment; and
- (b) on such occasion as the circumstances may require after the appointment,

disclose to the Authority his interest which is of a class or description determined by the Authority under subsection (2).

(2) The Authority may, for the purposes of this section –

- (a) determine the class or description of the interest required to be disclosed;
- (b) determine the details of the interest required to be disclosed and the manner in which such interest is to be disclosed; and
- (c) from time to time change any matter determined under paragraph (a) or (b).

(3) The Authority shall establish and maintain a register relating to any disclosure required to be made under subsection (1) (“the register”) at its principal office.

(4) Where a Board member or a committee member makes a disclosure as required by subsection (1), the Authority shall cause his name and the particulars of the disclosure to be recorded in the register, and if a further disclosure is made, the Authority shall cause particulars of the further disclosure to be recorded in the register.

(5) For the purpose of enabling any member of the public to ascertain the particulars of any disclosure required to be made under subsection (1), the Authority shall make available the register for inspection by the public at any reasonable time.

### **35. Common part is public place**

For the purposes of any law, all common parts within the leased area to which the public has access is a public place.

### **36. Immunity**

No personal liability is incurred by a Board member or a committee member in respect of anything done, or omitted to be done, by him in good faith in relation to the performance or purported performance of any function under this Ordinance (including a function purportedly delegated or sub-delegated under this Ordinance).

### **37. Exemption from taxation**

(1) The Authority is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

(2) The Authority is also exempt from stamp duty under the Stamp Duty Ordinance (Cap. 117) in respect of any instrument relating to –

- (a) the conveyance of any immovable property under which the beneficial interest of the property passes by way of gift to the Authority; or
- (b) the transfer of any stock within the meaning of that Ordinance, under which the beneficial interest of the stock passes by way of gift to the Authority.

## PART 6

### CONSEQUENTIAL AMENDMENTS

#### **Prevention of Bribery Ordinance**

#### **38. Public bodies**

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding –

“110. West Kowloon Cultural District Authority (including any committees established under the West Kowloon Cultural District Authority Ordinance ( of 2008)).

111. Any entity established under section 5(2)(h) of the West Kowloon Cultural District Authority Ordinance ( of 2008).”.

#### **The Ombudsman Ordinance**

#### **39. Organizations to which this Ordinance applies**

Part I of Schedule 1 to The Ombudsman Ordinance (Cap. 397) is amended by adding –

“West Kowloon Cultural District Authority.”.

PROVISIONS WITH RESPECT TO BOARD MEMBERS AND  
PROCEEDINGS OF AND OTHER MATTERS CONCERNING BOARD

PART 1

APPOINTMENT AND REMOVAL OF BOARD MEMBERS

1. **Term of office of Board members**

Subject to sections 5 and 6, any Board member (other than the Chief Executive Officer) –

- (a) where he is not a public officer, is to be appointed by the Chief Executive for a term not exceeding 3 years; and
- (b) where he is a public officer, is to hold office at the discretion of the Chief Executive.

2. **Other terms and conditions of appointment of Board members**

Any Board member (other than the Chief Executive Officer) who is not a public officer holds office on such terms and conditions of appointment as the Chief Executive may from time to time determine.

3. **Resignation of Board members**

(1) Any Board member (other than the Chief Executive Officer) who is not a public officer may resign from office by giving notice in writing to the Chief Executive.

(2) The resignation under subsection (1) takes effect on the date the Chief Executive receives the notice or the date specified in the notice (whichever is the later).

4. **Removal of Board members**

If the Chief Executive is satisfied that any Board member (other than the Chief Executive Officer) who is not a public officer is unable or unfit to perform

his functions due to permanent incapacity or other sufficient cause, the Chief Executive may by notice in writing remove the member from office.

#### **5. Acting Chairman**

(1) If at any time the Chairman is absent from Hong Kong or the Chief Executive is satisfied that the Chairman is unable, because of temporary incapacity or otherwise, to act as the Chairman -

- (a) the Chief Executive may appoint any Vice-Chairman to act in his place; or
- (b) where all Vice-Chairmen are also absent from Hong Kong or are unable to act as Vice-Chairman for any other reason, the Chief Executive may appoint any other Board member to act in the place of the Chairman.

(2) An appointment under subsection (1) is to continue in force until it is revoked by the Chief Executive or an appointment is made under section 6 of this Ordinance (whichever first occurs).

(3) This section applies where the Chairman is not a public officer.

#### **6. Temporary Board members**

(1) If at any time any Board member who is not a public officer (other than the Chairman and the Chief Executive Officer) is absent from Hong Kong or the Chief Executive is satisfied that the member is unable, because of temporary incapacity or otherwise, to act as a Board member, the Chief Executive may appoint another person to act in place of the member.

(2) An appointment under subsection (1) is to continue in force until it is revoked by the Chief Executive or an appointment is made under section 6 of this Ordinance (whichever first occurs).

## PART 2

### CHIEF EXECUTIVE OFFICER

#### 7. **Terms and conditions of appointment of Chief Executive Officer**

The Chief Executive Officer holds office on such terms and conditions of appointment as the Authority may from time to time determine.

#### 8. **Functions of Chief Executive Officer**

- (1) Subject to subsection (2), the Chief Executive Officer –
  - (a) shall be responsible for the general management and administration of the Authority's affairs; and
  - (b) shall perform such functions as are for the time being assigned to him under this section or delegated to him under section 11(1) of this Ordinance.
- (2) The Authority may –
  - (a) assign to the Chief Executive Officer any function specified by the Authority;
  - (b) direct that any function assigned under paragraph (a) shall be performed by the Chief Executive Officer only in a manner, or subject to conditions or modifications, that is specified by the Authority; and
  - (c) direct that a function assigned under paragraph (a) is not to be performed by the Chief Executive Officer.

(3) An assignment or direction under subsection (2) is to remain in force for such period as is specified by the Authority at the time of the assignment or direction or, if no period is specified, until it is withdrawn by the Authority.

9. **Chief Executive Officer not to take part in certain Board meetings**

(1) Without affecting the generality of section 15, where a matter relating to the terms and conditions of appointment or removal of the Chief Executive Officer is brought up for discussion or consideration in a Board meeting, he shall not –

(a) take part in the deliberation of the Board with respect to the matter; or

(b) vote on any question concerning it,

unless two-thirds of the other Board members present at the meeting decide otherwise.

(2) Where the Chief Executive Officer is neither permitted to take part in the deliberation of the Board nor vote on the question, then for so long as the matter is being discussed or considered at the Board meeting, his presence is disregarded for the purpose of forming a quorum for the meeting.

10. **Removal of Chief Executive Officer**

The Authority may, with the prior approval of the Chief Executive, remove the Chief Executive Officer.

## PART 3

### PROCEEDINGS OF BOARD

11. **Board meetings**

(1) Board meetings are to be held as often as may be necessary for the performance of the functions of the Board.

(2) Board meetings may be convened by the Chairman, any Vice-Chairman or any other 4 Board members.

12. **Chairman to preside at Board meetings**

At a Board meeting –

- (a) if the Chairman is present, he is to be the chairman of the meeting;
- (b) if the Chairman is not present but more than one Vice-Chairman is present, the Board members present are to choose one Vice-Chairman to be the chairman of the meeting;
- (c) if the Chairman is not present but a Vice-Chairman is present, the Vice-Chairman is to be the chairman of the meeting; or
- (d) if neither the Chairman nor any Vice-Chairman is present, the Board members present are to choose one of them to be the chairman of the meeting.

### 13. **Quorum**

(1) Subject to subsection (2), the quorum for a Board meeting is not less than half of the Board members.

(2) A quorum is not constituted unless –

- (a) 2 Board members (other than the Chairman and the Chief Executive Officer) who are not public officers are present; and
- (b) not less than 2 Board members (other than the Chairman) who are public officers are present.

### 14. **Voting rights**

(1) Subject to subsection (2) and sections 9 and 15, each Board member present at a Board meeting has one vote.

(2) In relation to any matter on which a decision is taken by vote in a Board meeting, and in the event that voting is equally divided, the chairman of the meeting has a casting vote.

## 15. Conflict of interest

(1) Subject to section 9, where a Board member who is in any way directly or indirectly interested in any contract or any other matter which is to be discussed or considered by the Board at a Board meeting –

- (a) he shall (if he is present at the Board meeting) –
  - (i) disclose at the meeting the nature of his interest (and such disclosure is to be recorded in the minutes of the meeting);
  - (ii) withdraw from the meeting while the contract or matter to which the disclosure relates is being discussed or considered, unless –
    - (A) if he is not the chairman of the meeting, he is permitted by the chairman of the meeting to take part in such discussion or consideration; or
    - (B) if he is the chairman of the meeting, two-thirds of the other Board members present at the meeting decide so to permit him; and
- (b) he shall not –
  - (i) vote on any question concerning the contract or matter, unless –
    - (A) if he is not the chairman of the meeting, he is permitted by the chairman of the meeting to vote on the question; or
    - (B) if he is the chairman of the meeting, two-thirds of the other Board members present at the meeting decide so to permit him; or
  - (ii) influence or seek to influence a decision of the Board concerning the contract or matter.

(2) Where a disclosure is made under subsection (1)(a)(i) and the Board member concerned is neither required to withdraw from the relevant meeting nor permitted to vote, then for so long as the contract or matter to which the disclosure relates is being discussed or considered at such meeting, his presence is disregarded for the purpose of forming a quorum for the meeting.

(3) Where a decision is made by the Board to enter into any contract with a Board member described in subsection (1), or with a person through whom any Board member has a direct or indirect interest in the contract, the parties to the contract are to be made public in such manner as the Board considers fit.

(4) The validity of any proceedings of the Board is not affected by the failure of a Board member to comply with this section.

(5) The public interest stated by a Board member who is a public officer under section 16 in respect of any matter does not, for the purposes of subsection (1), render the member interested in that matter.

#### **16. Public officers to state public interest**

Where at a Board meeting a Board member who is a public officer and is present considers that any matter which is to be or is being discussed or considered by the Board is or could be contrary to, or otherwise raises or puts in issue, or could so raise or put in issue, the public interest as perceived by him, he shall –

- (a) state to the meeting his opinion regarding the relation between the public interest, as so perceived, and the matter; and
- (b) where appropriate, state how, in his opinion, an actual or potential conflict with that interest, as so perceived, arises or could arise.

17. **Board to regulate its proceedings and business**

The Board may, subject to the requirements of this Ordinance, regulate its own proceedings and business relating to any Board meeting.

PART 4

EXECUTION OF DOCUMENTS BY BOARD

18. **Seal and documents**

(1) The corporate seal of the Authority may be affixed to a document only if it is authorized by a resolution of the Board.

(2) The affixing of the corporate seal is to be authenticated by the signatures of any 2 Board members authorized by the Board, either generally or specially in that behalf.

(3) Any document purporting to be a document duly executed under the corporate seal is admissible in evidence and is, unless the contrary is proved, to be deemed to be so executed.

(4) Any contract or instrument which, if entered into or executed by a natural person, would not be required to be entered into or executed under a corporate seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board in that behalf.

**Explanatory Memorandum**

The main objects of this Bill are to establish the West Kowloon Cultural District Authority (“the Authority”) as a statutory body and to provide for the structure, functions and powers of the Authority.

Part 1 - Preliminary

2. Clause 1 provides for the short title of the Bill and empowers the Secretary for Home Affairs to appoint a day on which the Bill (when enacted) shall come into operation.

3. Clause 2 contains definitions that are necessary for the interpretation of the Bill.

#### Part 2 – West Kowloon Cultural District Authority

4. Clause 3 incorporates the West Kowloon Cultural District Authority as a body corporate with perpetual succession and a corporate seal.

5. Clause 4 sets out the functions of the Authority in respect of –

- (a) the preparation of a development plan for consideration by the Town Planning Board (“TPB”);
- (b) the development of the area leased to the Authority (“leased area”) in accordance with the land use and other requirements or conditions specified in the development plan as may be approved by the Chief Executive in Council under the Town Planning Ordinance (Cap. 131);
- (c) the provision of arts and cultural facilities and related facilities within the leased area and ancillary facilities outside such area;
- (d) the operation, management or maintenance of, or otherwise dealing with, arts and cultural facilities and related facilities within the leased area and ancillary facilities outside such area; and
- (e) the promotion of arts and culture generally within the local community.

6. Clause 5 sets out the powers of the Authority for the purpose of performing its functions under clause 4.

7. Clause 6 provides for the establishment of the Board of the Authority (“Board”). The Board is the governing and executive body of the Authority.

This clause also sets out the composition of the Board and the maximum number of Board members is 20.

8. Clause 7 provides for the appointment of the Chief Executive Officer of the Authority.

9. Clause 8 provides for the establishment of the Audit Committee.

10. Clause 9 empowers the Board to establish any committees other than the Audit Committee.

11. Clause 10 provides for the appointment of employees of the Authority. The Authority may also engage consultants or advisors for their technical or professional services.

12. Clause 11 provides for the delegation and sub-delegation of functions of the Authority.

13. Clause 12 (as read with the Schedule) provides for matters concerning the Board, including its proceedings and other matters.

14. Clause 13 enables the Chief Executive in Council to give written directions to the Authority if he considers that it is in the public interest to do so.

15. Clause 14 empowers the Chief Executive to obtain from the Authority any information relating to its affairs or activities.

16. Clause 15 empowers the Financial Secretary to obtain from the Authority any information relating to its financial affairs.

17. Clause 16 requires the Chairman and the Chief Executive Officer of the Authority to attend meetings at the request of the Legislative Council or any of its committees.

18. Clause 17 requires the Authority to consult the public on matters concerning the development or operation of various facilities within and outside the leased area.

### Part 3 – Planning matters

19. Clause 18 requires the Authority to consult the Secretary for Home Affairs and the public in preparing a development plan for consideration by the TPB.

This clause also deems a development plan which the TPB deems suitable for publication to be a draft plan prepared under the Town Planning Ordinance (Cap. 131) and relevant provisions of that Ordinance are to apply to the plan.

#### Part 4 – Financial matters

20. Clause 19 lists the resources of the Authority and imposes an obligation on the Authority to manage its finances with due care and diligence.

21. Clause 20 deals with the investment power of the Authority. Under this clause, the investment to be made by the Authority is to fall within the classes or descriptions of investment that the Financial Secretary may specify in writing.

22. Clause 21 deals with the power of the Authority to borrow or otherwise raise moneys from the Government and other sources.

23. Clause 22 empowers the Authority to enter into other financial transactions for the purpose of reducing financial risks to which it may be exposed.

24. Clause 23 enables the Legislative Council or its Finance Committee to authorize, by an authorizing resolution, the Financial Secretary to grant guarantees for the benefit of the Authority. The guarantees, if granted, are subject to terms and conditions specified in the authorizing resolution.

25. Clause 24 enables the Authority to establish and maintain general and special reserve funds.

26. Clauses 25 to 27 deal with accounting arrangements, including –

- (a) the preparation of statement of accounts;
- (b) the appointment of auditor and submission of reports; and
- (c) the power of the Director of Audit to conduct examinations on how the Authority expended its resources.

27. Clause 28 requires the Authority to send to the Financial Secretary reports on the affairs in respect of every subsidiary of the Authority and its audited statement of accounts for each financial year.

28. Clauses 29 and 30 require the Authority to send to the Secretary for Home Affairs, for the purpose of record, a corporate plan and a business plan of the Authority.

29. Clause 31 requires the Financial Secretary to table before the Legislative Council the statement of accounts and the auditor's report relating to each financial year of the Authority.

#### Part 5 – Miscellaneous

30. Clause 32 enables the Secretary for Home Affairs to make regulations.

31. Clause 33 enables the Authority to make bylaws.

32. Clause 34 requires disclosure of interest by Board members and committee members. This clause also imposes a duty on the Authority to establish and maintain a register in relation to the disclosure of interest by those members.

33. Clause 35 deems all common parts within the leased area to be public place for the purposes of any law.

34. Clause 36 confers immunity on Board members and committee members for acts done or omissions made in good faith.

35. Clause 37 exempts the Authority from taxation.

#### Part 6 – Consequential amendments

36. Clause 38 amends Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201).

37. Clause 39 amends Schedule 1 to The Ombudsman Ordinance (Cap. 397).

## IMPLICATIONS OF THE PROPOSAL

### Economic Implications

The economic impact assessment conducted by the Government Economist shows that the WKCD will bring \$2,660 million value added contribution<sup>1</sup> to GDP when operation of all Phase 1 arts and cultural facilities (i.e. 12 performing arts venues, an M+ and an Exhibition Centre) commence. Upon the operation of all Phase 2 arts and cultural facilities (i.e. another 3 performing arts venues and the M+ extension) in year 16 (16 years after the operation of all Phase 1 arts and cultural facilities), the value added contribution will rise to \$5,280 million. The contribution would reach \$5,670 million per annum by year 30, when operation of the arts and cultural facilities matures. During its operation stage over a total of 46 years, the WKCD will contribute a cumulative \$71,040 million value added (in present value terms) to the Hong Kong economy.

2. Regarding employment opportunities, a total of 9 980<sup>1</sup> jobs will be created when operation of all Phase 1 arts and cultural facilities commence, increasing to 20 080 jobs in year 16 and further to 21 540 jobs in year 30. A wide spectrum of economic sectors, including arts and culture, design and publishing, advertising and marketing, and tourists-related industries, will benefit from the development of the WKCD.

3. Around 2.4 million tourists are expected to visit the WKCD when operation of all Phase 1 arts and cultural facilities commence, consisting of about 0.9 million tourists attending the exhibitions/arts performances there and another 1.5 million tourists visiting the WKCD for sight-seeing purpose only. Growing at an average annual rate of 2.2% over the ensuing 30 years, over 4.5 million tourists will visit the WKCD annually by year 30, bringing an additional \$3,720 million spending per annum to Hong Kong.

4. During the construction stage, construction works and related services are expected to bring around 11 020 jobs providing a total employment of around 33 700 man-years, comprising 10 040 jobs (30 600 man-years) for Phase 1 arts and cultural facilities, supporting facilities and property segment and 980 jobs (3 100 man-years) for Phase 2 arts and cultural facilities. The spillover effect of the construction on the rest of the economy will generate a

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<sup>1</sup> Unless specified otherwise, all monetary figures in the present assessment of economic implications are expressed in real terms at 2006 prices and all figures related to job creations are on a full-time equivalent basis.

further 18 360 man-year job opportunities. In economic output terms, the construction spending and the associated stimulation to the economy will generate a total of \$15,700 million in value added (in present value terms) to the economy during the construction stage.

5. In addition to the substantial tangible economic output and employment, the WKCD is also a strategic investment to enhance Hong Kong's longer term standing and competitiveness as an international city through a host of intangible economic benefits as follows -

- (a) fostering the development of a creative economy;
- (b) nurturing local talents;
- (c) attracting and retaining investors and talents;
- (d) raising quality of life;
- (e) reinforcing economic integration with the Pearl River Delta; and
- (f) branding Hong Kong as a world city.

### **Financial Implications**

6. Assuming LegCo will pass the Bill before the end of the current legislative session, we envisage the WKCDA will be set up in late 2008. On this basis and in line with the financing approach recommended by the Consultative Committee on the Core Arts and Cultural Facilities of the West Kowloon Cultural District, we will seek Finance Committee (FC)'s approval in mid 2008 for an upfront endowment of \$21.6 billion to be given to the WKCD Authority upon its establishment in 2008 to finance the capital costs of the facilities under the purview of the WKCDA over the project period (including planning, design and construction costs of Phase 1 and Phase 2 arts and cultural facilities, related facilities (including RDE facilities) and ancillary facilities, periodic major repair and renovation costs, museum collection costs and the costs incurred by the WKCDA during the development of phase 1 facilities). The RDE facilities would be managed by the WKCDA which may sublet the spaces to other parties and the income so generated would be used to cover the operating deficits of the facilities under the WKCDA's purview. This would enable the WKCD to be developed and operated in a financially sustainable manner within the 40-hectare site.

7. The Government will forgo revenue from tax and stamp duty by exempting WKCDA from taxation under the Inland Revenue Ordinance and stamp duty under the Stamp Duty Ordinance in respect of instruments relating to the conveyance of immovable property and the transfer of stock by way of gift and donation to the WKCDA.

### **Civil Service Implications**

8. The planning of the WKCD will involve a number of interface issues relating to the overall planning and infrastructural developments in the West Kowloon Reclamation area, including notably the interface with the Terminus of the Express Rail Link, and the connectivity of the WKCD with its surrounding areas and districts. At this stage, it is considered necessary to set up a dedicated WKCD Planning Office in the Home Affairs Bureau (HAB) to co-ordinate efforts in preparing for the establishment of the WKCDA and to undertake initial tasks such as those relating to the preparation of the development plan. The Planning Office will in due course provide the necessary interface between the Government and the WKCDA on the implementation of the WKCD project in the first few years of the project.

9. In this connection, we propose to set up the Planning Office by July 2008, subject to the passage of the West Kowloon Cultural District Authority Bill by LegCo before the end of the current legislative session. HAB will need to create three directorate posts, supported by ten non-directorate posts from 2008-09 to 2010-11, on a time-limited basis, to assist in the co-ordination work as well as the establishment of the WKCDA. We have secured a time-limited allocation of \$36.5 million in the context of the 2007 Recurrent Resource Allocation Exercise for the purpose. We will consult the relevant LegCo Panel before seeking approval of the Establishment Subcommittee on the creation of the three directorate posts in mid-2008. Further resources, if required, would be sought through established channels.

### **Sustainability Implications**

10. The proposal is in line with the sustainability principle of enhancing the cultural vibrancy and diversity of Hong Kong. As a major initiative to meet the long-term infrastructural needs of Hong Kong's arts and cultural development, the WKCD project will entail the provision of a series of arts and cultural facilities, including performing arts venues and museums, which could function as a driving force to foster organic growth and development of culture and creative industries.

11. The WKCD is envisaged to be more than a physical congregation and clustering of arts and cultural facilities. It would serve as an impetus to improve quality of life through the provision of an accessible, open, spacious harbourfront with diverse arts, cultural and entertainment facilities and activities

for public enjoyment.

12. The project would also be conducive to economic development as the provision of quality culture, entertainment and tourism programmes would help to create a must-visit appeal to both local residents and visitors from abroad. Further detailed sustainability assessments will be conducted during the planning stage for the WKCD project to integrate sustainable development considerations into the development plan.